

Hearing Date: TBD
Objection Deadline: December 14, 2008

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
LEHMAN BROTHERS HOLDINGS, :
INC., *et al.*, : Case No. 08-13555 (JMP)
: (Jointly Administered)
Debtors. :
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**LIMITED OBJECTION OF ELECTROSCIENTIFIC INDUSTRIES, INC. TO THE
PROPOSED ASSUMPTION AND ASSIGNMENT OF INVESTMENT ADVISORY
AGREEMENT (DISCRETIONARY) AS SET FORTH IN NOTICE OF
ASSIGNMENT AND ASSUMPTION OF CONTRACTS**

ElectroScientific Industries, Inc. (“**ESI**”), by and through its undersigned counsel,
hereby respectfully submits this limited objection (the “**Objection**”) to the assumption and
assignment of an investment advisory agreement (discretionary) as set forth in a notice of
assignment and assumption of contracts. In support of its Objection, ESI states as follows:

1. Lehman Brothers Holdings, Inc. (“**LBHI**”) filed a chapter 11 petition with
this Court on September 16, 2008. Certain of LBHI’s subsidiaries have since filed chapter 11
petitions with this Court (collectively with LBHI, the “**Chapter 11 Debtors**”). On September
19, 2008 the Securities Investor Protection Corporation commenced a proceeding in the United

States District Court for the Southern District of New York (the “**District Court**”), seeking an order adjudicating that customers of Lehman Brothers, Inc. (“**LBI**” and together with the Chapter 11 Debtors, the “**Debtors**”) required the protection of the Securities Investor Protection Act of 1970 (“**SIPA**”). A trustee appointed under SIPA is administering LBI’s estate. The District Court subsequently transferred the SIPA proceeding to this Court, which is now presiding over the Chapter 11 Debtors’ cases and the SIPA proceeding.

2. On September 20, 2008, the Bankruptcy Court, entered an order (the “**Sale Order**”) approving, *inter alia*, the sale of certain assets of the Debtors to Barclays Capital Inc. (“**BCI**”). The Sale Order allows BCI to assume contracts related to the purchased assets.

3. In an exercise of its rights under the Sale Order, BCI issued a notice dated December 4, 2008 (the “**Notice**”), which designates an Investment Advisory Agreement (Discretionary) between LBI and ESI (the “**Investment Agreement**”) for assignment to BCI. The Notice states that the cure amount to assume and assign the Investment Agreement is \$0.00. The Notice does not further identify the agreement that it seeks to assume and assign.

4. The Notice requires that any responses to the Notice be filed with this Court no later than December 14, 2008. ESI received the Notice two business days prior to the deadline to respond, on December 11, 2008.

5. Despite diligent efforts, ESI has been unable to locate a copy of the Investment Agreement and has reason to believe that, to the extent it exists, it is no longer executory. ESI hereby requests that LBI or BCI provide ESI with a copy of the Investment Agreement.

6. In addition, ESI objects to the Notice to the extent that it purports to assume and assign an agreement that is no longer executory. *See* 11 U.S.C. § 365(a).

7. ESI reserves its right to object to the Notice's proposed cure amount and to further supplement this Objection based upon additional facts learned after receipt of the Investment Agreement. ESI further requests that this Court postpone any hearing on this Objection until two weeks after ESI receives a copy of the Investment Agreement.

8. ESI further reserves its right to assert any other claims it may have against LBI or the Chapter 11 Debtors.

CONCLUSION

WHEREFORE, ElectroScientific Industries, Inc. respectfully requests that the Court require the Debtors or BCI to provide ESI with a copy of the Investment Agreement, set a hearing for two weeks after the production of such Investment Agreement, and that this Court grant such other and further relief as may be just and proper.

Dated: December 14, 2008

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